IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 860 of 2002

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED COMMERCIAL BANK NOW UCO BANK - Appellant(s)
Versus
TECHNOCART INCORPORAT DELETED AS PER ORDER PASSED IN & 3 - Defendant(s)

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Appearance :

MR KG VAKHARIA for Appellant(s) : 1,
None for Defendant(s) : 1,3 - 4.
MR PREMAL R JOSHI for Defendant(s) : 2,
NOTICE SERVED for Defendant(s) : 3.2.1
NOTICE UNSERVED for Defendant(s) : 3.2.2

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/06/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and decree dated 21st April 1986 passed in Civil Suit No.2050 of 1981 by the City Civil court, Ahmedabad, whereby the suit came to be dismissed with compensatory costs in the sum of Rs.1000/-.

2. The case of the appellant, as emerging from the record, is that the respondents-defendants were given cash credit facilities to finance their business and they have issued one demand promissory note for Rs.80000/ on 31st December 1976. All necessary documents were executed for hypothecation. Again within a period of three years therefrom the

respondents passed another demand promissory note, another letter of waiver and another letter of hypothecation on 22nd December 1979 and renewed the legal documents in terms of acknowledging their liabilities for the said dues. The respondents promised to adjust the cash credit within few days, but they failed to pay the same and failed to adjust their cash credit account. A legal notice was therefore issued to the respondents to which no reply has been given. According to the appellant the respondents are liable to pay a sum of Rs.88,393.77/- upto 8th March 1981. Ultimately the appellant filed the aforesaid suit which came to be dismissed.

3. Learned counsel for the appellant submitted that the trial court has passed the order on the basis that the appellant did not take any steps for getting exparte decree against them, but the suit could not have been dismissed on such ground. He submitted that Order 37 of Civil Procedure Code does not provide for the dismissal of the suit on the ground of the failure of the plaintiff to take summons for judgement against the defendants. According to the learned Advocate, though the respondents were served, they did not defend the suit and therefore the trial court should have passed a decree as prayed for. He therefore submitted that the appeal requires to be allowed.

4. From the perusal of the judgement it is found that the trial court has believed the defendant no.2

that the rubber stamp impressions on the documents at Exhs.56 to 60 were missing and the bank wanted to have the rubber stamp impressed on them with a view to making a show that the documents at Exhs.56 to 60 were executed by the concerned persons in their capacity as partners of respondent no.1 firm. It was, therefore found that there was no reason for calling for the rubber stamp of respondent no.1. After referring to the power of attorney it was found that the concerned bank officers were in know of execution of power of attorney by one or more partners in the respondent no.1 firm. It was the further finding that the respondent no.2 signed the documents at exhs.56 to 60 in his capacity as the power of attorney holder of Dakshaben Ratilal Pandya, a partner of respondent no.1 firm. The trial court has also found that it was not obligatory on the part of the respondent no.2 to give reply to the notice when he was not shown that he was served with that notice in his capacity as a partner or as a holding out partner of the respondent no.1 firm. Apart from that the appellant-plaintiff has not taken any steps for bringing the legal heirs of respondent no.3 on record. The trial court has also pointed out many lapses on the part of the appellant which need no further discussion. I am in complete agreement with the reasonings adopted and findings arrived at by the trial court. In the result, the appeal is dismissed. No order as to costs.

[K.S. JHAVERI, J.]

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